

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** CS/HB 345 Alcoholic Beverage Regulation  
**SPONSOR(S):** Insurance, Business, & Financial Affairs Policy Committee; Kreegel  
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 784

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	<b>REFERENCE</b>	<b>ACTION</b>	<b>ANALYST</b>	<b>STAFF DIRECTOR</b>
1)	Insurance, Business & Financial Affairs Policy Committee	12 Y, 1 N, As CS	Livingston	Cooper
2)	Finance & Tax Council	3 Y, 12 N	Wilson	Langston
3)	General Government Policy Council			
4)				
5)				

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**SUMMARY ANALYSIS**

The Division of Alcoholic Beverages and Tobacco (Division) in the Department of Business and Professional Regulation (DBPR) is responsible for regulating the conduct, management, and operation of the manufacturing, packaging, distribution, and sale within the state of all alcoholic beverages. Florida's alcoholic beverage law provides for a structured three-tiered distribution system: manufacturer, wholesaler, and retailer. The retailer makes the ultimate sale to the consumer. Alcoholic beverage excise taxes are collected at the wholesale level and the state "sales tax" is collected at the retail level.

The bill codifies, with changes, and clarifies the registration requirements specified in rule 61 A-4.005, F.A.C., relating to brand and label registrations for distilled spirits. The bill requires notification within certain time periods by the DBPR to each brand registrant upon receipt of their application and payment of the appropriate fee and upon approval or denial of the registration. The bill provides for the issuance of an up to 5-year brand or label registration. This provision allows registrants to choose how many years they would like to register the brand, up to a maximum of five years.

The bill allows a distiller to conduct spirituous beverage tastings (consumer sampling) under the same parameters as are currently authorized for distributors and vendors. The bill authorizes a distiller to deliver to a vendor licensed to sell spirituous beverages by package (carry-out) or for consumption on premises, free samples of up to 12 containers of no more than 1.75 liters per container of distilled spirits per year for promotional purposes.

The bill corrects cross-references in the sales tax chapter and conforms application of the current sales tax exemption to beverage tastings to include tastings conducted by distillers.

The DBPR estimates "there will be an increase in workload in the Bureau of Licensing that will cost \$50,521 in operating expenditures in the first year and \$46,644 each thereafter."

The 2010 Revenue Estimating Conference adopted that this bill would have a positive, but insignificant recurring impact on both General Revenue and State Trust beverage tax beginning in FY 2010-11. This bill will also have a positive, but insignificant impact on General Revenue service charge in FY 2010-11 and a negative, but insignificant recurring impact. This bill will also have a \$.3M impact on State Trust fees in FY 2010-11, with a zero recurring impact. The impacts on revenue in this bill are generated from the registration of licensed distiller brands or labels with the DBPR.

This act shall take effect July 1, 2010.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

The Division of Alcoholic Beverages and Tobacco (Division) in the Department of Business and Professional Regulation (DBPR) is responsible for regulating the conduct, management, and operation of the manufacturing, packaging, distribution, and sale within the state of alcoholic beverages. Florida's alcoholic beverage law provides for a structured three-tiered distribution system: manufacturer, wholesaler, and retailer (vendor). The retailer makes the ultimate sale to the consumer. Alcoholic beverage excise taxes are collected at the wholesale level based on inventory depletions and the state sales tax is collected at the retail level.

Chapters 561-565 and 567-568, F.S., comprise Florida's beverage law. The provisions of the bill primarily apply to ch. 565, F.S., relating to "Liquor." Section 565.01, F.S., provides a definition for purposes of the beverage law and states:

565.01 Definition; liquor.--The words "liquor," "distilled spirits," "spirituous liquors," "spirituous beverages," or "distilled spirituous liquors" mean that substance known as ethyl alcohol, ethanol, or spirits of wine in any form, including all dilutions and mixtures thereof from whatever source or by whatever process produced.

#### Present situation

##### **Container labeling**

Sections 564.045 and 565.095, F.S., closely mirror each other relating to "licensure as [a] primary American source of supply" (PAS) for wine and distilled spirits, respectively. The PAS provisions require the registration of each brand of wine and distilled spirits sold in Florida and the licensure of that brand's PAS. Generally, the PAS is either the manufacturer or the source closest to the manufacturer in the channel of commerce from whom the product can be secured.

It has long been a common practice to require the registration of the brand and label of each alcoholic beverage container introduced into the marketplace. The 1937 Laws of Florida, chapter 18015, s. 8, specified in part:

Section 8. The Director of the Beverage Department by and with the consent of the Governor, is vested with power and authority to make and promulgate reasonable rules and regulations governing the labeling of all malt, vinous and spirituous beverages containing more than 1% of

alcohol by weight, which rules and regulations shall comply with the Federal regulations pertaining to such labeling.

Current law relating to distilled spirits specifies:

565.08 Labeling regulations; liquor.--The division is fully authorized to make and promulgate reasonable rules and regulations governing the labeling of all liquors containing 0.5 percent or more of alcohol by volume, which rules and regulations shall not conflict with the federal regulations pertaining to such labeling.

Currently, rule 61 A-4.005, FAC, establishes the guidelines for brand and label registration:

61A-4.005 Brand Registration.

(1) Each brand or label of spirituous beverages sold or offered for sale within the State of Florida or transported within the State of Florida must be registered with the Division and must have a brand registration number assigned to it by the Division. Requests for registration of brands shall be submitted on forms prescribed by the department for that purpose and in the manner prescribed by the Division.

(4) The registration year for all brands or labels shall be from July 1 to June 30 inclusive of each year.

(5) Annual registration of brands shall be affected by additions to or deletions from the master list of the registrant for the previous year and by the payment of twenty (\$20.00) dollars for each brand or label registered.

(6) Subsequent to the annual registration of brands or labels, any registrant desiring to register new brands or labels under which spirituous beverages are to be sold or offered for sale or transported within the State of Florida may register such brand or label on a registration form prescribed by the Division for that purpose and must make payment of twenty (\$20.00) dollar registration fee for each such brand or label. The payment of the \$20.00 registration fee shall be for the balance of the current registration year as set forth in Section (4) above.

Currently, alcoholic beverage and tobacco licenses are renewed annually. In general, the majority of the alcoholic beverage licenses, with the exception of brand registrations, are renewed in September for the northern part of Florida and in March for the southern part of the state. Brand registrations renewals are due by June 30<sup>th</sup> each year.<sup>1</sup>

Currently, the Administrative Procedure Act (APA), ch. 120, F.S., specifies various procedural guidelines for the operation of state agencies. Section 120.60, F.S., addresses general licensure procedures. Notification of the receipt of an application by an agency is not required under the APA. However, subsection (1) of this section specifies in part:

Upon receipt of an application for a license, an agency shall examine the application and, within 30 days after such receipt, notify the applicant of any apparent errors or omissions and request any additional information the agency is permitted by law to require.

Subsection (1) also specifies that:

Every application for a license shall be approved or denied within 90 days after receipt of a completed application unless a shorter period of time for agency action is provided by law.

### Effect of proposed changes

The bill codifies, with changes, and clarifies the registration requirements specified in rule 61 A-4.005, FAC. This bill adds the guideline that the registration of brands or labels will be effected if a brand or label is changed, if a brand or label is added or removed from a master list of a registrant, or if the nonpayment of registration fees for a brand or label occurs. The bill further specifies that a registration application does not have to be filed and processed by the DBPR if no changes have been made to the

<sup>1</sup> DBPR spread sheet, 2010 Agency Legislative Proposals, Office of Budget & Financial Management, dated 11/14/2009, page 1, available in committee files.

brand or label during the year, however, the bill continues to require payment of the fee equal to the equivalent of the annualized fee.

The bill requires the DBPR to notify each brand registrant within 10 days that the application for registration and payment of the appropriate fee has been received by the DBPR. The bill also requires the DBPR to notify the applicant for registration of the approval or denial of a brand or label registration within 30 business days of receipt of the application and fee.

The bill provides for the issuance of an up to 5-year registration to registrants. This provision allows the registrant a choice as to how many years they would like to register the brand, up to a maximum of five years. The bill does not change the registration fee but does specify that the renewal fee may not exceed the statutory caps on an annualized basis.

### Present situation

#### **Beverage tastings**

Activities and interaction between alcoholic beverage licensees are extensively regulated and constitute the basis for Florida's "tied house evil" law. Among those restrictions, s. 561.42, F.S. prohibits a manufacturer or distributor from having any financial interest, directly or indirectly, in the establishment or business of any retailer. Notwithstanding the overall premise, the Beverage Law also contains exceptions to the structured three-tiered distribution system.

The DBPR web page notes -

"Section 561.42, F.S., provides certain limitations and prohibitions related to the manufacture, distribution, and retail sales of alcoholic beverages. Among other provisions, the statute provides for the following:

- Prohibits, with certain exceptions, gifts, loans of money or property, or rebates between manufacturers or distributors and vendors;
- Limits the extension of credit and provides consequences for nonpayment of sales by a vendor;
- Provides certain restrictions related to manufacturers or distributors giving, lending, renting, selling, or otherwise furnishing advertising materials to a vendor; and
- Prohibits certain sampling activities."<sup>2</sup>

Beer, wine and spirits tastings (consumer sampling of the alcoholic beverage product) are permitted by the Beverage Law. Section 565.17, F.S., allows distilled spirits distributors and distilled spirits vendors (but not manufacturers) to conduct distilled spirits tastings where beverages are sold by the package (carry-out) or for on-premises consumption.

565.17 Beverage tastings by distributors and vendors.--A licensed distributor of spirituous beverages, or any vendor, is authorized to conduct spirituous beverage tastings upon any licensed premises authorized to sell spirituous beverages by package or for consumption on premises without being in violation of s. 561.42, F.S., [tied house evil restrictions] provided that the conduct of the spirituous beverage tasting shall be limited to and directed toward the general public of the age of legal consumption.

Currently, there are no statutes that regulate the size or number of the samples provided at beverage tastings. However, the Division does have rules to guide the samples of spirituous beverages as they pertain to "gifts," as a part of the "tied house evil" restrictions. Under rule 61A-1.010, F.A.C., spirituous beverage samples cannot exceed 3 liters to each licensed premises and samples cannot be provided as gifts to a vendor who has purchased the brand within the last 12 months unless the ownership of the manufacturer or distributor has been transferred to a new entity or the vendor's license has been transferred to a new owner.

<sup>2</sup> See question 15 at [http://www.myfloridalicense.com/dbpr/abt/documents/abt\\_frequently\\_asked\\_questions51209.pdf](http://www.myfloridalicense.com/dbpr/abt/documents/abt_frequently_asked_questions51209.pdf) , March 16, 2010.

### Effect of proposed changes

The bill allows distillers to conduct spirituous beverage tastings under the same parameters as distributors and vendors.

The bill authorizes a distiller to deliver to any vendor licensed to sell spirituous beverages by package or consumption on premises, free samples of up to 12 containers of no more than 1.75 liters per container of distilled spirits per year for promotional purposes without being in violation of the "tied house evil" financial assistance limitations.

### Present situation

#### **Sales Tax – Chapter 212, F.S.**

Currently, a sales tax exemption exists as authorized in s. 212.08(7)(s), F.S., and specifies:

(s) Tasting beverages.--Vinous and alcoholic beverages provided by distributors or vendors for the purpose of "wine tasting" and "spirituous beverage tasting" as contemplated under the provisions of ss. 564.06 and 565.12, respectively, are exempt from the tax imposed by this chapter.

The footnote to this paragraph cites at footnote number 9:

"9. Note.--See ss. 564.08 and 565.17 for specific references to beverage tastings."

### Effect of proposed changes

The bill corrects the cross-references in this sales tax section and clarifies the application of the current sales tax exemption to beverage tastings as authorized in s. 564.08, F.S., relating to wine and s. 565.17, F.S., relating to liquor.

#### **B. SECTION DIRECTORY:**

Section 1. Amends s. 212.08(7)(s), F.S., to correct the cross-references in this section to clarify the current application of the sales tax exemption to beverage tastings of wine and distilled spirits.

Section 2. Amends s. 565.08, F.S., to statutorily codify guidelines for the registration of brands or labels of distilled spirits beverages.

Section 3. Amends s. 565.17, F.S., to allow distillers to conduct spirituous beverage tastings under the same parameters as distributors and vendors.

Section 4. This act shall take effect July 1, 2010.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

##### **1. Revenues:**

The 2010 Revenue Estimating Conference adopted that this bill would have a positive, but insignificant recurring impact on both General Revenue and State Trust beverage tax beginning in FY 2010-11. This bill will also have a positive, but insignificant impact on General Revenue service charge in FY 2010-11 and a negative, but insignificant recurring impact. This bill will also have a \$.3M impact on State Trust fees in FY 2010-11, with a zero recurring impact. The impacts on revenue in this bill are generated from the registration of licensed distiller brands or labels with the DBPR.

2. Expenditures:

The DBPR estimates “there will be an increase in workload in the Bureau of Licensing that will cost \$50,521 in operating expenditures in the first year and \$46,644 each thereafter.”

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

In the aggregate, the brand and label registration changes should facilitate the processing of the registrations for the primary source of supply for distilled spirits thus improving timelines for these licensees. Also, the bill is further designed to facilitate marketing processes for spirits distillers by allowing spirits tastings and free samples for promotional purposes.

D. FISCAL COMMENTS:

The DBPR states “The bill provides for the issuance of an up to 5-year registration to selected registrants. Issuing an “up to 5-year registration” for liquor would most likely not reduce the number of new and revised primary American source of supply licenses and brand registrations, but should reduce the number of renewals processed annually. Since this affects liquor only, and based on FY 08/09 liquor renewals, it would have a minimal impact as only 4,350 of the 38,715 total brand renewals were for liquor. This equates to 11% of all brands renewed. The LicenseEase system will need configuration changes to allow a renewal structure different than malt beverage and vinous brands. Also, using the phrase “up to” could indicate that the registrant would have a choice as to how many years they would like to register the brand, up to a maximum of five years which would also require significant changes to the current system’s configuration.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, does not appear to reduce the authority that counties or municipalities have to raise revenue in the aggregate, and does not appear to reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

#### **IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES**

On January 13, 2010, the Insurance, Business, & Financial Affairs Policy Committee took up the bill, adopted several amendments, and passed the bill as a Committee Substitute by a vote of 12-1.

The CS differs from the bill as filed in the following areas:

- Removes language that a distiller located in Florida shall have preference by the DBPR in processing the registration or fee payment over distillers that are not located in Florida.
- Removes language that a distiller located in Florida may conduct distilled spirits tastings thus allowing all licensed distillers to conduct tastings under the same parameters as are currently authorized for distributors and vendors.
- Removes language that a distiller located in this state may deliver to a vendor certain amounts of distilled spirits per year for promotional purposes thus allowing all licensed distillers to provide promotional spirits to vendors.
- Removes the provision in the bill that would have repealed language in the beverage law that prohibits the sale, processing, or consumption of distilled spirits containing more than 153 “proof” thus distilled spirits proof limitations in current law continue in effect.